

RULE CHANGE 2017(06)
COLORADO RULES OF CIVIL PROCEDURE

Rule 52. Findings by the Court

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Neither requests for findings nor objections to findings rendered are necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions on motions under Rule 12 or 56 or any other motion except as provided in these rules or other law. ~~Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b).~~

COMMENT

2017

The final sentence of the former version of the rule, "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b)," was replaced because of requirements for findings and conclusions in rules other than Rule 41(b) and in some statutes. Regardless, judges are encouraged to include in decisions on motions sufficient explanation that would be helpful to the parties and a reviewing court. Thus, even where findings and conclusions are not required, the better practice is to explain in a decision on any contested, written motion the court's reasons for granting or denying the motion.

Rule 52. Findings by the Court

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Neither requests for findings nor objections to findings rendered are necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions on motions under Rule 12 or 56 or any other motion except as provided in these rules or other law.

COMMENT

2017

The final sentence of the former version of the rule, "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b)," was replaced because of requirements for findings and conclusions in rules other than Rule 41(b) and in some statutes. Regardless, judges are encouraged to include in decisions on motions sufficient explanation that would be helpful to the parties and a reviewing court. Thus, even where findings and conclusions are not required, the better practice is to explain in a decision on any contested, written motion the court's reasons for granting or denying the motion.

COLORADO RULES FOR MAGISTRATES

Rule 5. General Provisions

(a) – (f) [NO CHANGE]

(g) For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice — which must be written except to the extent given orally to parties who are present in court — shall state that all parties must consent to the function being performed by the magistrate.

(1) If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.

(2) Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.

(hg) All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et. seq. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

Rule 6. Functions of District Court Magistrates

(a) (1) (A) – (H) [NO CHANGE]

(I) Conduct probable cause hearings pursuant to [rules promulgated under the Interstate Compact for Adult Offender Supervision](#), C.R.S. sections 24-60-~~2801301~~ to ~~2803-309~~, [the Uniform Act for Out of State Parolee Supervision](#).

(J) [NO CHANGE]

(2) [NO CHANGE]

(b) – (e) [NO CHANGE]

(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule 5(g).

Colorado Rules for Magistrates

Rule 5. General Provisions

(a) – (f) [NO CHANGE]

(g) For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice — which must be written except to the extent given orally to parties who are present in court — shall state that all parties must consent to the function being performed by the magistrate.

(1) If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.

(2) Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.

(h) All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et. seq. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

Rule 6. Functions of District Court Magistrates

(a) (1) (A) – (H) [NO CHANGE]

(I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.

(J) [NO CHANGE]

(2) [NO CHANGE]

(b) – (e) [NO CHANGE]

(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule 5(g).

Amended and Adopted by the Court, En Banc, May 25, 2017, effective July 1, 2017.

By the Court:

Allison H. Eid
Justice, Colorado Supreme Court